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March 8, 2004

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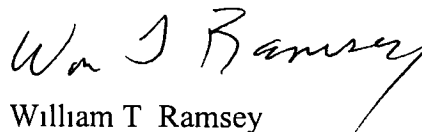
Re: Docket Nos. 00-00523

Dear Director Jones:

Enclosed please find an original and fourteen copies of the "REPLY BRIEF OF THE RURAL INDEPENDENT COALITION" to be filed in each of the above-referenced proceeding

Copies of the "REPLY BRIEF OF THE RURAL INDEPENDENT COALITION" are being provided to each of the parties, as indicated on the attached Certificate of Service. Please direct any questions regarding this filing to me at your convenience.

Sincerely yours,

  
William T. Ramsey

**Before the  
Tennessee Regulatory Authority  
Nashville, Tennessee**

<b>IN RE:</b>	)	
	)	
<b>GENERIC DOCKET ADDRESSING</b>	)	<b>DOCKET NO. 00-00523</b>
<b>RURAL UNIVERSAL SERVICE</b>	)	
	)	
	)	

**REPLY BRIEF OF THE RURAL INDEPENDENT COALITION**

**on behalf of**

**Ardmore Telephone Company, Inc.  
Ben Lomand Rural Telephone Cooperative, Inc.  
Bledsoe Telephone Cooperative  
CenturyTel of Adamsville, Inc.  
CenturyTel of Claiborne, Inc.  
CenturyTel of Ooltewah-Collegedale, Inc.  
Concord Telephone Exchange, Inc.  
Crockett Telephone Company, Inc.  
DeKalb Telephone Cooperative, Inc.  
Highland Telephone Cooperative, Inc.  
Humphreys County Telephone Company  
Loretto Telephone Company, Inc.  
Millington Telephone Company, Inc.  
North Central Telephone Cooperative, Inc.  
Peoples Telephone Company  
Tellico Telephone Company, Inc.  
Tennessee Telephone Company  
Twin Lakes Telephone Cooperative Corporation  
United Telephone Company  
West Tennessee Telephone Company, Inc.  
Yorkville Telephone Cooperative**

**"The Rural Independent Coalition of Small LECs and Cooperatives"**

**March 8, 2004**

**Before the  
Tennessee Regulatory Authority  
Nashville, Tennessee**

<b>IN RE:</b>	)	
	)	
<b>GENERIC DOCKET ADDRESSING</b>	)	<b>DOCKET NO. 00-00523</b>
<b>RURAL UNIVERSAL SERVICE</b>	)	
	)	
	)	

**REPLY BRIEF OF THE RURAL INDEPENDENT COALITION**

The Rural Independent Coalition (hereafter referred to as the “Coalition” or the “Independents”) respectfully files this Reply Brief in response to the brief filed by BellSouth Telecommunications, Inc. (“BellSouth”) on February 27, 2004, and the “CMRS Carriers’ Joint Comments Relating to February 17, 2004 Status Conference” (“CMRS Carriers’ Comments”) filed on the same date.

The BellSouth brief and the CMRS Carriers’ Comments address two matters:

**1. The Pending April 3, 2003 “Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition” (the “Coalition Petition”); and**

**2. The Pending July 25, 2003, BellSouth “Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000” (the “BellSouth Motion”).**

BellSouth and the CMRS carriers’ each rely selectively on only aspects of the applicable law and facts. Each attempts to use its selected pieces of law and fact to weave a tale to support their positions. The result is a patchwork quilt that BellSouth and the CMRS Carriers apparently expect the Hearing Officer and the Authority to accept as the “whole truth” rather than whole cloth. The resolution of the issues raised by both pending motions cannot ignore dispositive facts

and application of all applicable law, regulation and standing orders of the Authority.<sup>1</sup> As set forth in the Coalition's Brief filed on February 27, 2004, the Coalition's Petition should be granted; the BellSouth Motion should be dismissed as moot.

**I. The Coalition's Petition Should be Granted. The Rural Independents are Entitled to Compensation for Services Under Existing Terms and Conditions Until Those Terms and Conditions are Terminated, Replaced or Modified by the Authority.**

The pertinent facts associated with the Coalition Petition are not in dispute:

1. BellSouth has an established physical interconnection with each rural Independent.
2. BellSouth terminates traffic to each rural Independent and compensates the Independent in accordance with the terms and conditions of "Annex I – IntraLATA Switched Toll Services."<sup>2</sup>
3. With respect to the traffic that is the subject of the Coalition Petition, no other terms and conditions exist today that govern the termination by a rural Independent of traffic originated on a CMRS carrier's network and carried by BellSouth to the rural Independent for termination through the existing physical interconnection between BellSouth and each Independent.
4. Until May 1, 2003, BellSouth compensated, or should have compensated, the rural Independents for the termination of all traffic, including traffic originated on the network of a CMRS carrier (the "subject traffic").<sup>3</sup>

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<sup>1</sup> The Coalition will address herein specific facts omitted by BellSouth and the CMRS Carriers. The Coalition will also address the incorrect legal conclusions presented as "absolute truths" by BellSouth and the CMRS Carriers. As a preliminary matter, however, the Coalition respectfully submits that numerous statements set forth in the BellSouth Brief appear to go far beyond the norm of acceptable zealous advocacy. When the Coalition company management representatives that have been involved in the ongoing negotiations with BellSouth reviewed the BellSouth Brief, they responded that the BellSouth filing is "shameful," "misleading," and "full of inaccuracies and spin." To the extent that these circumstances raise issues beyond the scope of this proceeding, the Coalition, its members, and its individual representatives reserve their rights and express their expectation that the Authority will, on its own motion, also act to address these concerns to protect the integrity of the Authority's processes.

<sup>2</sup> See, Attachment to BellSouth Brief, Annex I – IntraLATA Switched Toll Services (herein referred to as the "Existing Terms and Conditions").

<sup>3</sup> In the Joint Motion filed with the Hearing Officer in this proceeding on April 25, 2003, BellSouth agreed to continue to compensate each rural Independent according to the same terms and conditions "as BellSouth was paying prior to February 28, 2003." These terms and conditions are those very Existing Terms and Conditions that were referred to and required to be maintained by the former Hearing Officer in this proceeding in the "Initial Order of Hearing Officer" issued on December 29, 2000. As noted, at footnote 16 in the Coalition's February 27, 2004, Brief, "an issue exists with regard to whether BellSouth made full payments due to each Independent for the termination of this traffic. Each of the claiming Independents reserves its rights to pursue these claims in all appropriate forums."

5. The rural Independents have received no compensation for the subject traffic terminated on their respective networks after May 31, 2003.

6. The Authority has not acted to terminate, modify or replace the Existing Terms and Conditions pursuant to which the rural Independents have been (or should have been) compensated for the termination of the subject traffic.<sup>4</sup>

There is not and cannot be any dispute about these facts. In their respective Brief and Comments, BellSouth and the CMRS Carriers collectively craft three arguments in their apparent joint attempt to defeat the Coalition Petition: 1) BellSouth wrongfully argues that the Existing Terms and Conditions do not apply to the subject traffic; 2) BellSouth and the CMRS Carriers assert that the terms and conditions applicable to the termination of traffic on the networks of rural Independents can somehow be altered and governed by bilateral "meet-point billing" arrangements between BellSouth and the CMRS carriers; and 3) BellSouth and the CMRS Carriers argue that they have each offered settlements that they think should fully satisfy the rural Independents. As discussed below, each of these arguments fail as a matter of law and equity. The Coalition Petition should be granted and BellSouth should be required to compensate the Independents for the subject traffic in accordance with the Existing Terms and Conditions.

**A. The Existing Terms and Conditions are in effect and applicable.**

BellSouth clearly does not like the December 29, 2000 *Initial Order of the Hearing Officer* in this proceeding. BellSouth has long had lawful paths available to it to pursue changes in the Existing Terms and Conditions which otherwise remain in place until terminated, replaced or modified by the Authority. The choices available to BellSouth, however, do not include self-help. Yet, that is precisely the choice BellSouth has made with respect to the termination of the traffic that is the subject of the Coalition Petition.

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<sup>4</sup> Pursuant to the May 5, 2003 Order issued by the Hearing Officer, the compensation rate was temporarily modified to 3 cents per minute applicable to the subject traffic terminated during May, 2003, in accordance with the Joint Motion filed by BellSouth and the Coalition on April 25, 2003.

Instead of proposing a new terminating rate for this traffic, BellSouth simply and unilaterally announced that it would no longer compensate the rural Independents for the subject traffic.<sup>5</sup> BellSouth apparently decided that its power was beyond the scope of the Authority decisions, and that it did not require the Authority's approval to modify or terminate the Existing Terms and Conditions. BellSouth's position is arbitrary, without basis in law or fact, and contrary to the decisions rendered in this proceeding.

**1. BellSouth's reliance on a paragraph in a 1996 FCC decision is misplaced, and ignores subsequent contradictory FCC authority.**

BellSouth's rationalization for its position is simplistic and misleading. BellSouth maintains that the "passage of CMRS-originated traffic" to the rural Independent networks is not subject to the Existing Terms and Conditions.<sup>6</sup> BellSouth maintains that somehow, and apparently somewhat magically, it has no obligation to compensate the rural Independents pursuant to the Existing Terms and Conditions. BellSouth's need for magic arises because its only source of authority for its contention is paragraph 1036 of the FCC's August 8, 1996 decision in CC Docket No. 96-98. BellSouth maintains that this paragraph supports the contention that the subject traffic "has been deemed local by the FCC," and that "BellSouth certainly has no obligation to pay access charges to the ICOs for termination of such traffic."<sup>7</sup>

The FCC issued a subsequent decision, ignored by BellSouth, which modified the paragraph of the 1996 FCC Order relied upon by BellSouth. Subsequent FCC decisions not only contradict BellSouth's argument that the subject traffic is "local," but specifically support the fact

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<sup>5</sup> The full history is recounted full in the Coalition Petition and the Brief filed on February 27, 2003. BellSouth's unilateral decision to dishonor the Existing Terms and Conditions resulted in the filing of the Coalition Petition.

<sup>6</sup> BellSouth Brief at p. 5.

<sup>7</sup> BellSouth Brief at pp. 3-4.

that the application of access charges, as provided for in the Existing Terms and Conditions, may apply to the subject traffic.

The subsequent and effective authority is found in *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9167, para. 34 (2001) (“*Order on Remand*”). In the *Order on Remand*, the FCC determined that all traffic to and from a CMRS carrier within an MTA is not necessarily “local,” as BellSouth would have the Authority believe. The FCC acknowledged that its decision on remand “differs from our analysis in the Local Competition Order, in which we attempted to describe the universe of traffic that falls within subsection (b)(5) as all ‘local’ traffic. We also refrain from generically describing traffic as ‘local’ traffic because the term ‘local,’ not being a statutory defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in section 251(b)(5) or section 251(g).”<sup>8</sup> BellSouth failed to disclose the subsequent, conflicting and overriding authority.<sup>9</sup>

**2. No federal authority exists that prohibits the application of the Existing Terms and Conditions to the termination of a call originated on a CMRS network carried by BellSouth and terminated on a rural network.**

In the *Order on Remand*, the FCC addressed the fact that pursuant to Section 251(g) of the Telecommunications Act, access charges may be applied to a CMRS call that is transported by an interexchange carrier (“IXC”) and terminated utilizing exchange access services.<sup>10</sup> The

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<sup>8</sup> *Order on Remand*, para. 34, footnotes omitted, underlining added. Text without footnotes provided at Appendix 1, Item 2

<sup>9</sup> The CMRS Carriers also rely on the same authority and fail to disclose the relevance of the *Order on Remand*. CMRS Carriers’ Comments, p. 3 at fn. 3. The Coalition anticipates that these parties may attempt to respond with post hoc rationalization for this omission. No rationalization can change the facts.

<sup>10</sup> “We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (251) (g) from the reciprocal compensation requirements of subsection (251)(b)(5). Thus, the statute

Telecommunications Act of 1996, together with the related implementation decisions of the FCC, provided CMRS carriers with an array of choices regarding how they may choose to interconnect their networks. No question exists that CMRS carriers may establish reciprocal compensation arrangements pursuant to Section 251(b)(5) of the Act and Section 51.701 of the FCC Rules and Regulations. Reciprocal compensation arrangements, however, are not automatically applied to pre-existing indirect interconnection of a CMRS carrier through another carrier. A reciprocal compensation arrangement, and any interconnection service or network element provided pursuant to Section 251 of the Act, can only be established in response to a request.<sup>11</sup>

Although reciprocal compensation arrangements have now long been available to CMRS providers upon request, only more recently have CMRS carriers made purported requests for

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does not mandate reciprocal compensation for "exchange access, information access, and exchange services for such access" provided to IXC's and information service providers." *Order on Remand* at para 34. The Coalition anticipates that BellSouth may contend that under the Existing Terms and Conditions, it provides service as a "toll carrier" rather than as an "IXC." This is a semantic distinction without a difference. The term of art "IXC" is more commonly referred to as the toll carrier or long distance carrier, the very role that BellSouth undertook pursuant to the Existing Terms and Conditions with respect to intraLATA interexchange traffic. CMRS carriers have long used the services of IXC's or toll carriers to transport and terminate their traffic. No regulation prevents a CMRS carrier from electing this choice in lieu of establishing interconnection terms and condition with each local exchange carrier to which it directs traffic. The choice of available transport and terminating arrangements is left to each carrier.

11 See, 47 U.S.C. Sec. 252(a). The Coalition is unaware of any lawful interconnection that occurs in the absence of a request and the establishment of associated terms and conditions. The existing indirect interconnection of CMRS carrier to rural networks through BellSouth occurs because a physical interconnection exists between BellSouth and each rural Independent subject to the Existing Terms and Conditions. The CMRS carriers apparently made a request of BellSouth to provide LATA-wide termination including the rural Independent networks. BellSouth and the CMRS carriers negotiated two way agreements to establish terms and conditions applicable to each of them. BellSouth never made a discrete request to utilize the existing physical interconnection with each rural Independent to terminate this traffic. Instead, BellSouth apparently assumed that it had the right to use the existing interconnection arrangement pursuant to the Existing Terms and Conditions. Until June 1, 2003, BellSouth purportedly conducted itself in accordance with the Existing Terms and Conditions, as modified by mutual agreement and approval of the Hearing Officer with respect to traffic terminated in May, 2003. Under these undisputed factual circumstances, it is odd for BellSouth to contend that the Existing Terms and Conditions did not apply to the subject traffic because of a paragraph in a 1996 FCC decision that has been superceded by a subsequent FCC decision. If BellSouth's contention that its carriage of CMRS traffic throughout the LATA was never subject to the Existing Terms and Conditions was correct (and, it is not) an additional issue would be raised: under what rights, terms, and conditions did BellSouth utilize the termination services of the rural Independents?



Section 251(b)(5) to the rural Coalition members.<sup>12</sup> Where it is in the interests of a CMRS carrier to elect to utilize the services of an interLATA or intraLATA carrier to transport and terminate its traffic to the rural Independents or any local exchange carrier, the CMRS carrier has every right to do. By maintaining an indirect interconnection arrangement through an interLATA or intraLATA carrier to terminate its traffic in this manner, the CMRS carrier is not required to engage in negotiations or enter into any agreement with the terminating carrier. Instead, the CMRS carrier enters into a bilateral agreement with the interLATA or intraLATA carrier which, in turn, terminates the traffic through the exchange access service it receives from the terminating local exchange carrier.<sup>13</sup>

The Coalition members are not parties to the negotiations and resulting agreements between BellSouth and CMRS carriers pursuant to which BellSouth carries CMRS traffic to the rural Independents for termination. In fact, when the CMRS traffic is delivered by BellSouth, the rural Independent cannot technically identify the traffic as distinct from any other traffic BellSouth delivers pursuant to the Existing Terms and Conditions.

The fact that the traffic originates on the network of a CMRS carrier and terminates within the same MTA is certainly relevant to the array of interconnection arrangements available to the CMRS carrier, and the fact that the CMRS carrier may request a reciprocal compensation arrangement pursuant to Section 251(b)(5) of the Telecommunications Act. This fact, however, is not relevant to the arrangement that exists between BellSouth and the rural Independents. It is

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12 These requests are currently the subject of petitions for arbitration in Docket No. 03-00585. The Coalition utilizes the term "purported request" in the text above because the Coalition maintains that no established interconnection standards apply. Section 251(b)(5) reciprocal compensation arrangements to the Section 251(a) indirect interconnection arrangement the CMRS carriers seek to maintain through BellSouth. The FCC rules addressing reciprocal compensation anticipate the establishment of a point of interconnection between the requesting carrier and the incumbent LEC. The Petitions for Arbitration are the subject of a Motion to Dismiss filed by the Coalition on March 3, 2004.

13 See fn. 10.

relevant only to the future terms and conditions that may be applied. Pursuant to the Existing Terms and Conditions, BellSouth provides services as an intraLATA interexchange carrier and utilizes the terminating services of each rural Independent. Contrary to the outdated 1996 FCC Order cited by BellSouth, the traffic originated on the CMRS networks and carried by BellSouth is not automatically deemed either “local” or subject to Section 251(b)(5). Consistent with both Section 251(g) of the Telecommunications Act and the FCC’s *Order on Remand*, the Existing Terms and Conditions remain applicable until they are modified, replaced or terminated by the Authority, as may occur as a result of the arbitrations in Docket 03-585.

**3. BellSouth’s self-styled role of “transit provider” does not exonerate it from its responsibilities under the Existing Terms and Conditions.**

BellSouth contends that “as the middle transit provider, it has no legal obligations to pay intercarrier compensation of any kind for the traffic originated by another party . . .”<sup>14</sup>

BellSouth’s only cited authority for its position is that same paragraph 1036 in the August 8, 1996 FCC decision in CC Docket No. 96-98 which, as discussed above, was superceded by the *Order on Remand*. While BellSouth points out that it has asserted its position “consistently and repeatedly,” the fact remains that BellSouth’s argument becomes no more believable or sustainable irrespective of how many times BellSouth says it!<sup>15</sup>

No law or regulation required BellSouth to carry the traffic of a CMRS carrier to a rural Independent network for termination through the existing access arrangement provided to

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14 BellSouth Brief, p.3.

15 And, no matter how many times they say it, BellSouth apparently is not too certain itself. See, eg., *Ex Parte* of BellSouth in CC Docket 01-92 before the FCC where BellSouth states, “Neither the Act nor any Commission precedent obligates BellSouth to provide transit service the Commission should clearly articulate these responsibilities in the context of these proceedings.” At the outset of this *Ex Parte*, BellSouth expresses the “need for the Commission to issue rules relating to intercarrier compensation associated with indirect interconnection and transiting functions.” BellSouth has filed numerous *Ex partes* in this FCC proceeding, which similarly demonstrate that the applicable law and regulation is not settled in the manner BellSouth has portrayed in its Brief at p. 3

BellSouth under the Existing Terms and Conditions. In an FCC arbitration of interconnection agreements between another large regional incumbent carrier (Verizon) and three CLECs in Virginia, the FCC arbitrator concluded that the FCC "had not had occasion to determine whether incumbent LECs have a duty to provide transit service under the [Section 251(c)(2)] provision of the statute, nor do we find clear Commission precedent or rules declaring such a duty."<sup>16</sup>

Accordingly, when BellSouth decided to provide so-called transit services to the CMRS carriers, it did so voluntarily outside the scope of the interconnection rules and obligations.<sup>17</sup> BellSouth's voluntary decision to provide transport and termination services to the CMRS carriers gave rise to no unilateral right for BellSouth to dishonor the Existing Terms and Conditions or to impose alternative terms and conditions on the rural Independents. While the rural Independents may have the duty to terminate traffic that a CMRS provider sends through BellSouth, no rural Independent is involuntarily obligated to terminate the traffic in accordance with terms and conditions dictated by BellSouth or any other party.

The CMRS providers arranged for BellSouth to carry their traffic to the rural Independent networks. BellSouth did so voluntarily pursuant to its agreements with the CMRS carriers. BellSouth carried the traffic over its trunk connections and purportedly compensated the Coalition Members pursuant to the Existing Terms and Conditions<sup>18</sup> through May 31, 2003. Subsequent to that date, BellSouth has dishonored the Existing Terms and Conditions apparently on the asserted, but wrongful, basis that it has no obligation to pay the Independents for the

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<sup>16</sup> See *Memorandum Opinion and Order*, CC Docket Nos. 00-218, 00-249, and 00-251 released July 17, 2002 at para 117

<sup>17</sup> BellSouth has also recognized and agreed with these FCC conclusions. See, *BellSouth Ex Parte* presentation filed with the FCC on July 31, 2003 in CC Docket No. 01-92, noting the FCC's Virginia arbitration decision

<sup>18</sup> The terms and conditions were modified by agreement approved by the Hearing Officer with respect to the subject traffic terminated during May, 2003

subject traffic.<sup>19</sup> To the contrary, and consistent with Section 251(g) of the Act, the *Order on Remand*, and the *Initial Order of Hearing Officer* issued in this proceeding on December 29, 2000, BellSouth has no basis to dishonor the Existing Terms and Conditions that govern its interconnection to each rural Independent until such terms are terminated, replaced or modified with the approval of the Authority.

**B. The execution of a “meet-point billing” arrangement by BellSouth and a CMRS Carrier does not affect the Existing Terms and Conditions between BellSouth and each rural Independent.**

BellSouth claims that its decision to disregard the Existing Terms and Conditions “has arisen due to the implementation (footnote omitted) of Meet-Point Billing with CMRS Carriers.”<sup>20</sup> BellSouth proceeds to present a tale that simply does not hold together against the applicable facts and law. A face-value reading and acceptance of the BellSouth brief would leave the reader wondering “What is wrong with the rural Independents? Why don’t they follow the industry guidelines?”

After all, if the reader accepts BellSouth’s premises at face-value, the conclusions are easy: BellSouth and the CMRS carriers must have a right to go to “Meet-Point Billing” and

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19 BellSouth Brief, p 2

20 *Id* BellSouth prefaces the words quoted above with, “As the Hearing Officer is aware. ” The Coalition is concerned that BellSouth may attempt wrongfully to utilize the Hearing Officer’s words in the May 5, 2003 *Order Granting Conditional Stay, Continuing Abeyance, and Granting Interventions* (the “May 5, 2003 Order”) as an imprimatur of its position regarding the efficacy of bilateral agreements between CMRS carriers and BellSouth on the rural Independents. In the May 5, 2003 Order there are multiple references to these purported “meet point billing arrangements.” For example, the Hearing Officer stated that he “understands that the traffic that is the subject of the dispute includes only CMRS-originated traffic transiting BellSouth’s network and terminating on a Coalition member’s network where BellSouth has entered into a meet point billing agreement with the CMRS carrier that originated the traffic.” (May 5, 2003 Order at pp 5-6.) Undoubtedly, this and other references by the Hearing Officer to “meet point billing arrangements” are intended to convey nothing more than recognition of BellSouth’s claim that agreements referred to as “meet point arrangements” exist between BellSouth and the CMRS carriers. The Coalition is confident that the Hearing Officer did not intend to convey to BellSouth any endorsement of BellSouth’s apparent theory that it is empowered to enter into bilateral contracts with CMRS carriers that affect the rights of rural Independents who were not parties to those contracts. The Coalition trusts that BellSouth will not be so brazen as to suggest that the Hearing Officer would, within the May 5, 2003 Order, overturn hundreds of years of well recognized common law (i.e., that two parties to a contract cannot by their agreement impose obligations on a non-party).

affect the rights of the rural Independents because BellSouth says it is so. And, once the move to "Meet-Point-Billing" by agreement of the CMRS carriers and BellSouth takes place, the rural Independents must have an obligation to relieve BellSouth of responsibility for payment for the termination of the subject traffic because BellSouth says it is so.<sup>21</sup> And, if BellSouth saying so is not sufficient, the CMRS carriers also say it is so!<sup>22</sup>

Other than claiming "it is so," neither BellSouth nor the CMRS carriers provide any authority or basis for their claim that they can bilaterally enter into so-called "Meet-Point-Billing" arrangements and thereby affect the rights of the rural Independents. Neither BellSouth nor the CMRS carriers provide any such authority. Nor could they provide any authority for their claim - no such authority exists.<sup>23</sup>

"Meet-Point-Billing" is a term of art originated in the telecommunications industry to describe a billing arrangement where two or more carriers provide interexchange access to another carrier. The Coalition respectfully suggests that the issue raised by the contention of BellSouth and the CMRS carriers is not whether at some future time a "Meet-Point-Billing" arrangement may be an appropriate replacement for the Existing Terms and Conditions. The issue raised by BellSouth and the CMRS carriers is whether their bilateral agreements to utilize a

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21 BellSouth Brief, p 2

22 See, e g, CMRS Carriers' Comments at pp 4-5.

23 In fact, the only legal authority cited anywhere in the BellSouth Brief or the CMRS Carriers' Comments in support of any of their arguments is the FCC's August 8, 1996 decision in CC Docket No 96-98. As discussed *supra*, those aspects of that Order cited (i.e., para 1036) as support by BellSouth and the CMRS Carriers have been modified by the *Order on Remand*. From the perspective of professional responsibility it is, at minimum, odd that counsel for both BellSouth and the CMRS Carriers each cite only the August 8, 1996 Order and that neither party discloses knowledge of the *Order on Remand*. Familiarity with the *Order on Remand* would appear to be a prerequisite to conduct good-faith negotiations of Section 251 interconnection. In addition, and as discussed at fn 15, *supra*, BellSouth must know that there is no legal authority that sustains its claim of no responsibility when it carries traffic and proclaims the traffic to be "transit traffic" and subject to an automatic "meet point billing arrangement."

“Meet-Point-Billing” arrangement can impose obligations on a rural Independent that is not a party to the BellSouth - CMRS carrier so-called “Meet-Point Billing” agreement. The answer to this issue is a most definite “No.”

The ultimate demonstration that no substance underlies the position of BellSouth and the CMRS providers is found in a review of the industry standards applicable to the establishment of “meet-point billing arrangements.” These are the very guidelines referred to by BellSouth in its Brief.<sup>24</sup> In pertinent part, these industry guidelines establish the following overall principle at the outset of the statement of the guidelines:

**“When all involved providers agree to a meet-point Billing arrangement, these guidelines are used.”**(Emphasis added.)<sup>25</sup>

It is hardly surprising that industry guidelines would recognize a basic principle of contract law: all parties to any interconnection meet-point billing arrangement should be in agreement prior to implementing the arrangement. This concept simply reflects the general common law notion that two parties to an agreement cannot impose obligations and responsibilities on a non-party.

Instead of addressing this fundamental and critical principle, BellSouth chooses to hurl a gratuitous vituperative characterization, asserting that the rural Independents “bury their heads in

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24 See, e.g., BellSouth Brief at footnotes 2, 3 and 4. The Coalition respectfully brings to the attention of the Hearing Officer that BellSouth indicates at fn. 2 and fn. 3 that it utilizes “Meet-Point Billing” arrangements with CLECs in Tennessee. The Coalition members are not parties to any such agreements. The information disclosed by BellSouth in its Brief, however, appears to relate to additional concerns regarding whether BellSouth has violated the Existing Terms and Conditions as a result of actions other than those under consideration in the Coalition Petition. Coalition members report that they have received invoices labeled “access bills” from various CLECs purporting to charge the rural Independent for the termination of intraLATA interexchange traffic that is the responsibility of BellSouth pursuant to the Existing Terms and Conditions. The fact that BellSouth has disclosed the existence of these agreements with CLECs is indicative of *prima facie* evidence that BellSouth is not abiding by the *Initial Order of the Hearing Officer* issued December 29, 2000 with respect to matters beyond the scope of the Coalition Petition. The Coalition respectfully asks the Hearing Officer, on his own motion, to take action to ensure that BellSouth’s conduct does conform to the standing Orders of the Authority.

25 See, Attachment – extraction of Section 2 from the ATIS/OBF-MECAB industry guidelines, the very standards often referenced by BellSouth and the CMRS providers.

the sand.”<sup>26</sup> Once again, however, the words of BellSouth cannot change the facts or law. No effective “Meet-Point-Billing” arrangement has been established among all the necessary parties: the rural Independents, BellSouth, and the CMRS carriers.<sup>27</sup> The indirect interconnection arrangement utilized by the CMRS carriers to terminate their traffic in the rural networks has long been in place. The CMRS carriers and BellSouth apparently have bilateral arrangements whereby BellSouth transports the CMRS traffic for a fee to the rural Independent networks. BellSouth terminates the traffic through the established interconnection arrangement that BellSouth utilizes for the termination of all (non-EAS) traffic that it carries to the rural Independent networks.

As discussed *infra*, this interconnection arrangement is utilized by BellSouth subject to the Existing Terms and Conditions. Until June 1, 2003, BellSouth’s purported practice was to provide compensation to the rural Independents for the traffic it carried for the CMRS carriers in

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26 BellSouth Brief at fn 3. It is interesting to note that this BellSouth character attack on the rural Independents is in the context of what BellSouth calls the refusal of the rural Independents “to use the industry standard form used in Meet-Point Billing Arrangements ” The Coalition claims no knowledge of whether BellSouth’s head is buried in the sand or elsewhere, but does respectfully ask why BellSouth has never addressed the fact that “industry standard” meet-point billing arrangements are only implemented by the agreement of all participating parties

27 In accordance with the directives of the Hearing Officer set forth in the May 5, 2003 Order in this proceeding, the Coalition did attempt good-faith negotiations to determine whether mutually agreeable terms and conditions of such an arrangement could be established. The Coalition invested considerable time and resources, including the development of a three-party agreement for use as a starting point for discussions among all parties. BellSouth and the CMRS carriers, however, refused to participate in three party discussions. As a result, the negotiations initiated by the May 5, 2003 Order have resulted in the filing of petitions for arbitration now consolidated in Docket 03-585 wherein the Coalition filed on March 3, 2004, a “Preliminary Motion To Dismiss Or, In The Alternative, To Add An Indispensable Party ” (The “Coalition March 3 Motion ”) The subject matter of the Coalition March 3 Motion is clearly related to the issues in this proceeding, consequently, the Coalition also filed the March 3 Motion in this proceeding. In the CMRS Carriers’ Comments, the CMRS providers accurately anticipated the filing of the March 3 Motion. See, CMRS Carriers’ Comments, Section III, pp. 6-7. To the extent the CMRS Carriers have addressed the issues raised by the March 3 Motion, those issues are beyond the immediate scope of the consideration of the two pending motions the Coalition Petition and the BellSouth Motion. The Coalition Motion addresses only the enforcement of BellSouth’s obligations until the Authority terminates, replaces or modifies the Existing Terms and Conditions with respect to the termination of traffic carried by BellSouth that it has designated “CMRS traffic ” The Coalition accordingly reserves its right to respond to those aspects of the CMRS Carriers’ Comments that anticipated the March 3 Motion in accordance with the appropriate procedural schedule

accordance with the Existing Terms and Conditions.<sup>28</sup> In its Brief, BellSouth never specifically addresses the fact that this was its long-standing practice. Instead, BellSouth claims, “In the past, BellSouth provided payment to the ICOs for CMRS transit traffic as an accommodation because no billing record was provided to the ICOs (footnote omitted).”<sup>29</sup> The claim is not correct. No Coalition member is aware of any discussion or document wherein any reference was made that BellSouth would “gratuitously” compensate the rural Independents as an accommodation with respect to the lack of available “billing records.”<sup>30</sup>

No question of fact exists that BellSouth recognized that the subject traffic should be governed by the Existing Terms and Conditions. The Existing Terms and Conditions between BellSouth and each rural Independent cannot be modified by a so-called “Meet-Point Billing” agreement between a CMRS carrier and BellSouth. The Coalition Petition should, accordingly, be granted. BellSouth should be required to compensate the rural Independents for the termination of all subject traffic retroactively and going forward until the Authority replaces, modifies or terminates the applicability of the Existing Terms and Conditions to the subject traffic.

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28      *See, fn 3, infra*

29      BellSouth Brief, p 3

30      BellSouth suggests that the provision of what it calls “EMI 1101-01” records for the billing of traffic carried by BellSouth to a rural Independent is common accepted industry-wide practice. It is not. The rural Independents were not involved in the establishment of this self-proclaimed standard, and they have raised significant issues regarding the sufficiency and auditability of these records. While these issues are beyond the scope of this proceeding with respect to consideration of the Coalition Petition, they are before the authority in the arbitration proceedings in Docket No. 03-585.



**C. The “settlement” offers proposed by BellSouth and the CMRS Carriers are neither equitable nor sufficient.**

**1. The BellSouth Settlement Offer**

In a good-faith effort to resolve the issue raised by the Coalition Petition, the rural Independents participated in settlement discussions. It is important to note that these settlement discussions addressed issues that are separate and distinct from the negotiations related to the establishment of new terms and conditions applicable to the existing indirect interconnection arrangement. The matter of negotiating new terms and conditions was brought within the scope of a Section 251 interconnection request and the Section 252 negotiation and arbitration process by the Hearing Officer’s May 5, 2003 Order.

As a matter of fact and law, the initiation of a Section 251 request for new terms and conditions applicable to an existing interconnection arrangement did not have any impact on the application of the Existing Terms and Conditions to the existing interconnection arrangement. New terms and conditions arrived at lawfully pursuant to a Section 252 negotiation and arbitration process may replace the Existing Terms and Conditions when the new terms and conditions become effective. The transmission of a request for new terms and conditions, and the subsequent negotiation and arbitration, however, does not, under any statute or regulation, displace existing terms and conditions.

Notwithstanding the fact that negotiations to establish new terms and conditions for the existing interconnection arrangement were underway, BellSouth elected to continue to dishonor the Existing Terms and Conditions. The Coalition did not immediately request action on the Coalition Petition because the rural Independents hoped that resolution could be achieved through negotiation and without additional formal processes.<sup>31</sup> The Coalition was aware that

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31 BellSouth suggests that the Coalition’s agreement to hold the Coalition Petition in abeyance while the

BellSouth, the CMRS carriers and the Independents had reached agreements effective through December 31, 2004, in other states where similar issues arose as a result of BellSouth's decision to cancel existing arrangements.<sup>32</sup> The Coalition members expressed willingness to reach a similar compromise that would be effective through December 31, 2004 or until such time as lawful new terms and conditions are approved by the Authority, consistent with both the Authority's jurisdiction under the Telecommunications Act and the *Initial Order of Hearing Officer* issued on December 29, 2000.

In response, BellSouth proposed a settlement offer to provide compensation "through May, 2004."<sup>33</sup> BellSouth suggests that this offer "should provide the ICOs ample time to resolve this issue with no gap in payment, particularly in light of the proposed arbitration schedule for Docket No. 03-00585."<sup>34</sup> Once again, BellSouth is less than candid. An offer of payment through May, 2004 only covers traffic delivered through March 31, 2004.

If BellSouth intends in good faith to offer a compromise settlement that will remain in place until it is replaced by new terms and conditions approved by the Authority, BellSouth should so state. The Coalition, however, believes that BellSouth's offer of settlement is conditioned upon agreement by the rural Independents to alleviate BellSouth of responsibility for the terminating compensation irrespective of whether the Authority has approved new terms and conditions applicable to the existing interconnection arrangement. With all due respect, why

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Coalition participated in good faith settlement negotiations should somehow be viewed as detracting from the Coalition's position. BellSouth Brief, p. 6. BellSouth's position is reprehensible and an affront both to the Coalition's choice to participate in good faith negotiations and to the Hearing Examiner who encouraged negotiated resolution in the May 5, 2003 Order.

32 See, the Brief of the Coalition filed on February 27, 2003 at fn. 19, BellSouth Brief, p. 4. See also, the Coalition's "Response to the Petitions for Arbitration" filed on December 1, 2003 in both this proceeding and Docket 03-585, pp. 13-14, and to which a copy of such a settlement is attached.

33 BellSouth Brief, p. 4.

34 *Id.*, at fn. 5.

would the rural Independents agree to this BellSouth-imposed condition when all parties are aware that issues regarding the responsibility for the traffic have not been resolved by the FCC?<sup>35</sup> No law or regulation alleviates BellSouth of its responsibilities to compensate each rural Independent for the traffic it carries to the rural Independent networks for termination unless and until new terms and conditions applicable to the traffic are established and approved by the Authority.

## **2. The CMRS Carriers' Settlement Offer.**

The CMRS carriers state that they "made an interim compensation offer as contemplated by the statutory process. The intent of that offer was to address a presumed desire that Coalition members would want to receive compensation for CMRS Meet Point billed traffic until a final interconnection agreement was implemented."<sup>36</sup>

This statement is misleading and inaccurate in several respects. The characterization of the traffic as "CMRS Meet Point billed traffic" is, of course incorrect. No meet point billing arrangements have been established among all the parties. The CMRS carrier are correct in their assumption that the Coalition members want to be paid for the CMRS originated traffic carried to their networks for termination by BellSouth. Until such time, however, as the existing interconnection arrangement is subject to new terms and conditions, the Coalition members seek to enforce their rights to payment in accordance with the Existing Terms and Conditions.

The CMRS carriers do not specifically argue that their Section 251 request to negotiate new terms and conditions for the existing interconnection arrangement through BellSouth gave rise to an obligation on their part to pay the rural Independents in lieu of BellSouth. This

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<sup>35</sup> See, fn 17, *infra* See, generally, the *ex partes* filed by BellSouth at the FCC in Docket 01-92

<sup>36</sup> CMRS Carriers' Comments, p 4

suggestion is implied, perhaps, by their incorrect statement that their interim offer is “contemplated by the statutory process.” There are, however, no words in the Telecommunications Act that support this statement.

The concept of “interim compensation” is found only in Section 51.715 of the FCC’s Rules and Regulations.<sup>37</sup> The Coalition is not aware of any instance where a carrier seeking new terms and conditions for an existing indirect interconnection arrangement has established interim compensation pursuant to these rules. The Section 51.715 rules, in fact, do not apply “when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of telecommunications traffic by the incumbent LEC.”<sup>38</sup> The rules address circumstances where a carrier does not have any interconnection and it seeks to establish transport and termination on an incumbent LEC network. The interim arrangement rules established by Section 51.715 assure a requesting carrier that it does not have to wait to interconnect its traffic “pending resolution of negotiation or arbitration regarding transport and termination rates by a state commission under sections 251 and 252 of the Act.”<sup>39</sup>

Under the given circumstances, the CMRS carriers do not require an interim arrangement to ensure that they can terminate traffic to each rural Independent through BellSouth; an arrangement already exists. The Section 51.715 rules are not needed to establish

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37 47 C F R Sec 51 715

38 47 CFR Sec 51 715(a)(1)

39 47 CFR Sec 51 715(a) The rules also contemplate that the requesting carrier seeks transport “from the interconnection point between the two carriers to the terminating carrier’s end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.” 47 CFR Sec 51 701(c) The negotiation discussions between the Coalition representatives and the CMRS carriers focused only on the development of new terms and conditions applicable to the existing interconnection arrangement, and not to the establishment of any specific point of interconnection between any rural Independent with any CMRS carrier

interconnection, and the indirect interconnection arrangement under consideration is already used. Accordingly, the Section 51.715 rules are not applicable.

The Coalition rejected the settlement offer of the CMRS carriers because no basis exists in fact or law for the rural Independents to waive their existing rights to receive compensation from BellSouth pursuant to the Existing Terms and Conditions pending the Authority's modification, replacement or termination of the application of those terms and conditions to the subject traffic. The CMRS carriers incorrectly interpreted the rejection of their settlement offer as an indication "that the Coalition has no intention of establishing a 'reciprocal compensation arrangement' as required by the Act, so long as it expects to receive compensation at access rates."<sup>40</sup> To the contrary, no Coalition member has the ability to impede the establishment of a lawful reciprocal compensation arrangement consistent with the requirements of the Telecommunications Act and the FCC. Each rural Independent has willingly participated through Coalition representation both in the negotiations initiated as a result of the Hearing Officer's May 5, 2003 Order and in the resulting arbitrations in Docket 03-585.<sup>41</sup>

**D. Conclusion: The "Stake Date" Proposed by the CMRS Carriers has already been established. The Coalition Petition should be granted and BellSouth should conform to the Existing Terms and Conditions until those terms are changed with the approval of the Authority.**

Contrary to the claims of both BellSouth and the CMRS carriers,<sup>42</sup> the Coalition members have taken no action to impede any party from pursuing a lawful orderly process to establish new terms and conditions applicable to the termination of traffic originated on a CMRS network and

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40 CMRS Carriers' Comments, p 5

41 The Coalition notes that its March 3 Motion filed both in Docket No 03-585 and in this proceeding demonstrates that the interconnection terms and conditions that the CMRS carriers have sought in arbitration to impose on the rural Independents are obligations far beyond those required by statute or FCC regulations

42 See, e g , CMRS Carriers' Comments, pp 2-5, BellSouth Brief pp 5-6

carried by BellSouth to the rural Independent networks. The Coalition members have actively attempted to resolve the issues raised by the Coalition Petition:

1. The Coalition agreed to accommodate BellSouth with a reduced rate effective during an interim period approved by the Hearing Officer in the May 5, 2003 Order. The Coalition refrained previously from asking for action on the Coalition Petition because it anticipated that the issues could be resolved through good-faith negotiation.
2. The Coalition adhered to the directive of the Hearing Officer's May 5, 2003 Order regarding the participation in good faith negotiations to establish new terms and conditions applicable to the subject traffic. The Coalition was informed by both BellSouth and the CMRS carriers that they would not negotiate new terms and conditions for the three-way indirect interconnection arrangement on a three-way basis. The proposed agreement offered by the Coalition was set aside. The Coalition nonetheless continued efforts to negotiate in good faith with the parties.
3. The Coalition offered to enter a settlement with similar terms and conditions (including an effective term through December 31, 2004) to those settlements that have been executed by BellSouth, the CMRS carriers and rural telephone companies in other states. BellSouth rebuffed the efforts of the Coalition.

The single focus of the Coalition Petition is enforcement of the Existing Terms and Conditions until such time as the application of those terms and conditions to the termination of the subject traffic is modified, replaced or terminated by the Authority. The Coalition respectfully submits that the Hearing Officer established a process to enable the parties to arrive at new terms and conditions in accordance with the May 5, 2003 Order. Until new terms and conditions are established, BellSouth has not cited any authority, nor does any authority exist in law, that alleviates BellSouth of its responsibilities under the Existing Terms and Conditions.

BellSouth could have approached the rural Independents to negotiate a rate reduction for the termination of traffic BellSouth carries for the CMRS carriers to the rural Independent networks. Had such negotiations failed, BellSouth could lawfully have filed a petition with the Authority to seek a reduction in the applicable rate. Instead, however, BellSouth chose self help. BellSouth created a fiction and unilaterally changed the name of the existing indirect

interconnection arrangement and labeled it a “Meet-Point Billing” arrangement. BellSouth then unilaterally alleviated itself of financial responsibility to the rural Independents pursuant to the Existing Terms and Conditions.

As discussed herein, however, no “Meet-Point Billing” arrangements arise in the absence of agreement of all participating parties. Neither declaring a BellSouth-CMRS carrier arrangement to be “Meet-Point-Billing,” nor instigating negotiation and subsequent arbitration can alleviate BellSouth of its responsibilities pursuant to the Existing Terms and Conditions.

It is odd that the CMRS carriers are very anxious “that the TRA should affirmatively state that CMRS originated Meet-Point billed traffic is not subject to the PCP and that no further payment is due from BellSouth to the Coalition for such traffic as of a specified ‘Stake Date’.”<sup>43</sup> While it is easy to see how this request serves the interests of BellSouth, it is interesting to observe that the request was made by the CMRS carriers.

The lawful concerns and objectives of the CMRS carriers will be addressed in the arbitration proceeding, Docket 00-585. If the CMRS carriers have negotiated in good faith and arbitrated in accordance with lawful applicable standards, the arbitration process established by their petitions will address their requests and their concerns. There is no apparent reason for the CMRS carriers to seek a “Stake Date” to “serve the further purpose of finality, with it being understood that no Party may make claims against another for additional compensations or reimbursement prior to such date.”<sup>44</sup> Inasmuch as the Coalition Petition seeks only action to enforce rights against BellSouth pursuant to the Existing Terms and Conditions, the CMRS should have no concern unless they expect BellSouth to turn to them for reimbursement of the

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43 CMRS Carriers’ Comments, p 5

44 *Id*

fees that BellSouth owes the rural Independents. According to BellSouth, however, the CMRS carriers need not worry: "Prior to Meet Point Billing, CMRS providers contracted with BellSouth and those contracts contemplated that BellSouth would provide payment to the ICOs and collect payment from the CMRS providers."<sup>45</sup> BellSouth has suggested that it has entered agreements with the CMRS carriers whereby it no longer looks to the CMRS providers for repayment of charges paid to the rural Independents.<sup>46</sup>

Establishing a "Stake Date" in the manner proposed by the CMRS carriers is not appropriate. A "Stake Date" has already been established by the standing orders in this proceeding. The "Stake Date" is that date on which the Existing Terms and Conditions are modified, replaced or terminated by the Authority. Until that date arrives, BellSouth is obligated to conform to the Existing Terms and Conditions and to pay the rural Independents for the termination of all the traffic, including the CMRS carrier traffic carried by BellSouth to the rural Independent networks for termination. Accordingly, the Coalition respectfully requests that its Petition be granted.

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45 BellSouth Brief, p 2

46 The Coalition was under the impression from its discussions with BellSouth that BellSouth aggressively dishonored the Existing Terms and Conditions because it had executed agreements with the CMRS carriers that prevented BellSouth from seeking reimbursement for charges paid to the rural Independents. While the Coalition concluded that BellSouth may have made a "bad deal" with the CMRS carriers, the Coalition would not waive its rights against BellSouth under the Existing Terms and Conditions. Consequently, the Coalition Petition was filed. The CMRS carriers' desire for a "Stake Date" gives rise to the possibility of a different factual scenario whereby BellSouth and the CMRS carriers may have acted in concert to develop the "meet-point billing" fiction as a wrongful basis for depriving the rural Independents of their compensation rights pursuant to the Existing Terms and Conditions. Separate and distinct from the Coalition Petition which is only directed at seeking enforcement of the Existing Terms and Conditions against BellSouth, the Coalition members have not waived any rights that have arisen against either the CMRS Carriers or BellSouth as a result of either their independent actions or actions in concert that are related in any way to the subject matter of the Coalition Petition. Accordingly, the Coalition members have reserved their rights to pursue all additional appropriate actions before the Authority or any other forum with appropriate jurisdiction.



## **II. The BellSouth Motion Should be Denied. It is Moot.**

The BellSouth Brief confirms the conclusions set forth by the Coalition in its February 27, 2003 brief:

The BellSouth request is moot. There is no need to clarify that the Initial Order of the Hearing Officer addressing Issue 2 was not intended to discourage the parties from negotiating. The BellSouth Motion was held in abeyance, and the parties did negotiate. Nor is there any need to address whether the contract may be terminated pending the conclusion of this proceeding. Termination of the contract is no longer a relevant legal matter. BellSouth has already purported to terminate the contract.<sup>47</sup>

### **A. The Rural Independents have not delayed any process in this proceeding or suggested that the Existing Terms and Conditions cannot be lawfully terminated.**

BellSouth states that it “merely seeks an order clarifying the June 2002 Order in light of the ICOs’ apparent perspective that the TRA has, in that Order, granted them the right to retain the PCP until a state Rural USF process is implemented, a perspective that has stalled the negotiations.”<sup>48</sup> In support of its pleading BellSouth creates a tale that omits important facts, overlooks important aspects of the standing Orders in this proceeding and, in its best light, may lead to inaccurate conclusions.

The Coalition has never maintained that its members have a right to retain the PCP until a state Rural USF process is implemented. The Coalition does maintain that, in accordance with the *Initial Order of the Hearing Officer* issued on December 29, 2000, and affirmed by the Authority on May 9, 2001, the Existing Terms and Conditions will remain in place “until such time that the current arrangement is otherwise terminated, replaced or modified by the Authority.” The Coalition fully appreciates that it has no right to determine if and when the Authority will terminate, replace or modify the existing terms and conditions. Action by the

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47 Coalition Brief filed February 27, 2004, p 10

48 BellSouth Brief, p 12

Hearing Officer on the BellSouth Motion was not required for the Coalition to negotiate with BellSouth and to develop a new proposal to reduce access charges and maintain universal service in the rural areas of Tennessee served by the rural Independents.

It is simply disingenuous for BellSouth to claim that the negotiations have “stalled” because the Coalition perceives it has a right “to retain the PCP until a state Rural USF process is implemented.”<sup>49</sup> Contrary to these inaccurate statements, the Coalition never suggested that the PCP had to be retained, or that it was a “permanent surrogate” for a Rural Universal Service plan. The facts are fatal to BellSouth’s inaccurate accusations and inappropriate attacks.<sup>50</sup>

If a factual hearing is held on the BellSouth Motion, the incontrovertible facts will demonstrate that:

1. The Coalition took on the burden of developing a full proposal for reduced access charges and creating a new rate design structure to preserve universal service.
2. The Coalition expended considerable resources in the analysis of various rate designs responsive to BellSouth’s objective.
3. The Coalition agreed to implement a new proposal by BellSouth regarding the treatment of intrastate private lines. Subsequent to the agreement, BellSouth did not implement its proposal.
4. No member of the Coalition ever “stalled” the negotiation process or claimed that the PCP could be maintained indefinitely as a result of the December 2000 Order.
5. The Coalition representatives understood that BellSouth agreed with the proposal that the Coalition crafted.

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<sup>49</sup> *Id* BellSouth laces its Brief with this claim “ICOs have throughout the negotiations held up that *Order* as if it were a TRA mandate requiring the out-dated PCP to remain in place **forever**.” BellSouth Brief, p 7 “The reality is the ICOs have relied on the December 2000 *Order* to delay indefinitely ... The ICOs have treated the PCP as a permanent TRA-approved surrogate for a Rural Universal Service Program.” *Id* , p 8 None of these statements are supported by the facts

<sup>50</sup> BellSouth’s attack on the Coalition and its suggestion that the Coalition “stalled” in any way is both an inaccuracy and a professional affront to the Coalition member company representatives that have worked diligently to create a new proposed rate design. It is interesting to note that when BellSouth addresses the Coalition Petition, it characterizes the Coalition’s decision to seek “several agreed stays” as somehow demonstrating that BellSouth’s failure to pay terminating compensation is not an “emergency” BellSouth Brief, p 6 Beginning a page later in its Brief, and in the context of the BellSouth Motion, BellSouth initiates its attack on the Coalition, never candidly acknowledging that BellSouth joined with the Coalition in seeking continued stays of the BellSouth Motion!

The Coalition has acted in good faith and remains ready, willing and able to pursue adoption of the plan that it has developed.

**B. Until January 14, 2004, the Coalition understood in good faith that BellSouth was in agreement with the proposal developed by the Coalition.**

It is simply incredulous that the BellSouth Brief suggests that the rural Independents have not acted diligently or proposed a plan that addresses both BellSouth's objectives and the universal service needs of the rural areas of Tennessee served by the Coalition members. In the wake of BellSouth's inflammatory diatribe, the Coalition is particularly concerned that the Hearing Officer or a member of the Authority might be left with the mistaken impression that the picture painted by BellSouth is accurate. Contrary to BellSouth's suggestions and assertions, the Coalition members have acted diligently.<sup>51</sup>

As early as September, 2001, the Coalition unilaterally sought to bring attention to these issues and suggested convening workshops to address these matters.<sup>52</sup> BellSouth did not support the effort.<sup>53</sup> Subsequent to the filing of the BellSouth Motion, the Coalition met its commitment to negotiate with BellSouth and to develop a new proposal. The Coalition devoted significant resources to the development and analysis of alternative rate designs. The Coalition provided an initial plan to BellSouth last summer, and provided a final draft of the full proposal to BellSouth in November. In fact, the Coalition member company representatives understood that Bellsouth agreed to and supported the proposal.

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51 The BellSouth Brief is full of vitriolic innuendo wrongly suggesting that the rural Independents have failed to act. For example, "(T)he ICOs have had a four-year opportunity to work with BellSouth, both to re-negotiate the PCP and to make proposals regarding Rural USF in Tennessee." Bellsouth Brief, p. 8-9

52 See, Coalition Letter of September 4, 2001 to Director Malone

53 See, BellSouth Letter of October 22, 2001 to Director Malone.

The “stall” in the negotiations occurred at a meeting on January 14, 2004 when BellSouth representatives made it clear (for the first time) to the Coalition that BellSouth would not proceed to support the Coalition proposal unless the Coalition members promised to reduce access charges by a date certain irrespective of whether or not the proposed plan is adopted. The Coalition informed BellSouth that its members cannot make such a commitment. The Coalition respectfully submits that it is not appropriate for the rural Independents to commit to rate reductions for BellSouth in order to “buy” BellSouth’s support of the proposal that the Coalition and BellSouth have worked on. Contrary to BellSouth’s apparent misunderstanding, changes in the existing terms and conditions are subject to approval by the Authority, and not private “deals” with BellSouth.

This relatively new BellSouth demand is the single basis for the “breakdown” in the Coalition’s discussions with BellSouth. Action on the BellSouth Motion will not address this “breakdown.” Irrespective of BellSouth’s claims, the rural Independents fully understand that the PCP is subject to termination by the Authority. Grant of BellSouth’s Motion is not required to reinforce any such understanding. Nor is the grant of the BellSouth Motion necessary to “re-start the negotiations.”<sup>54</sup> The Motion is moot.

BellSouth apparently believes that grant of its Motion will somehow provide a signal to the Coalition members to acquiesce to the BellSouth January 14, 2004 demand for the rural Independents to “buy” BellSouth’s support for the Coalition proposal.<sup>55</sup> BellSouth overhangs

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54 BellSouth Brief, p 11

55 BellSouth asserts that the “clarification” it seeks “will be helpful in moving the ICOs away from their position that the PCP has been TRA-mandated to remain in place as a substitute for state Rural USF.” BellSouth Brief, p 12 But, BellSouth is fully aware that this is not the position of the rural Independents. In BellSouth’s possession is the Coalition’s proposal that demonstrates this fact. BellSouth apparently believes that the grant of its Motion will “motivate” the Coalition “to discuss a date certain by which BellSouth could expect to receive access reductions.” *Id.*, p 8. The Coalition respectfully submits that the most efficient path to the “date certain” BellSouth

this proceeding with the threat that it will alternatively “terminate the PCP by a date certain.”<sup>56</sup>

Once again, BellSouth overlooks the fact that it is only the Authority, and not BellSouth, that can terminate the existing terms and conditions.<sup>57</sup> BellSouth, however, apparently believes it can more quickly bully its way to its objective of obtaining reduced access charges

The BellSouth Motion was initiated by BellSouth’s original July 15, 2002 Motion which was replete with gratuitous invective directed at the Rural Independent industry in Tennessee. In an apparent effort to assuage the Coalition’s response to the July 15, 2002 filing, BellSouth submitted a “substitute motion” on July 25, 2002, from which it removed some of the incendiary language incorporated into the original filing. The BellSouth Brief filed on February 27, 2003 represents a disappointing reversion to its July 15, 2002, tactics. Granting the BellSouth Motion will not convince the rural Independents that good faith negotiation means that the Coalition must agree with the January 14, 2004 demand by BellSouth. The BellSouth Motion was not needed to initiate the development of new rate design proposals and related negotiations and workshops in this proceeding. The rural Independents are on record advancing this course in September, 2001. Grant of the BellSouth Motion is not necessary to clarify that the PCP may be terminated, modified or replaced by the Authority. Nor is the grant of the BellSouth Motion required as a catalyst to undertake negotiations and to develop new proposals – this has been done. The BellSouth Motion is moot and should be dismissed.

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seeks is to move forward with the presentation of the Coalition proposal that has been the subject of the discussions between BellSouth and the Coalition for many months

<sup>56</sup> BellSouth Brief, p 8

<sup>57</sup> In asserting that it can “cancel” the contract, BellSouth apparently overlooks the fact that the Hearing Officer determined that the existing arrangement between BellSouth and each Independent is ordered to be maintained “outside of the existing contract.” Initial Order of Hearing Officer, Docket No 00-00523, p. 12, fn 28

### **III. Conclusion and Procedural Recommendations**

#### **A. The Coalition Petition**

The Coalition members have not been compensated for any of the subject traffic carried to their respective networks since June 1, 2003. The Coalition agreed to hold the Coalition Petition in abeyance in the hope that resolution would be reached, but the settlement discussions have not been successful. BellSouth's right to utilize the existing physical interconnection with each Independent remains subject to the Existing Terms and Conditions.

BellSouth's unsupportable claim that it is alleviated from responsibility to compensate the rural Independents is based on one citation to a paragraph in a 1996 FCC that has been modified by subsequent FCC decisions. BellSouth's own *ex parte* presentations to the FCC in Docket No. 01-92 demonstrate that BellSouth is well aware that no statute or regulation alleviates its responsibilities. BellSouth's attempt to escape its obligations on the basis of the establishment of so-called "meet point billing arrangements" violates fundamental principles of contract law and the very specific industry guidelines on meet-point billing that BellSouth cites in support of its cause.

BellSouth knows or certainly should know that the FCC has modified the 1996 Order upon which it relies. BellSouth knows or certainly should know that, under the very industry guidelines it relies upon, "Meet-Point Billing Arrangements" can be established only when all providers agree to the arrangement. BellSouth's arguments in support of its position raise questions of propriety and good faith.

No question of good faith, however, exists with respect to the willingness of the Coalition to hold the Coalition Petition in abeyance while it sought to resolve the underlying issues through negotiation. BellSouth's intransigence has worn down the patience of the Coalition. The rural

Independents fully recognize that the Existing Terms and Conditions are subject to the modification, replacement or termination by the Authority, and that the establishment of new terms and conditions for the existing indirect interconnection arrangement are the subject of the arbitrations in Docket 03-585. Until such time, however, as new terms and condition are approved by the Authority, the Existing Terms and Conditions are applicable. The Coalition respectfully requests that the Hearing Officer grant the Coalition Petition and direct BellSouth to compensate the rural Independents retroactively for all traffic that should have been subject to the Existing Terms and Conditions; and further direct BellSouth to abide by the Existing Terms and Conditions with respect to all subject traffic until such time as the Authority modifies, replaces or terminates the Existing Terms and Conditions.

**B. The BellSouth Motion**

BellSouth has made representations to the Hearing Officer which are, in their best light, misleading. The Coalition members have never suggested that the PCP, or any aspect of the Existing Terms and Conditions, “has been TRA-mandated to remain in place as a substitute for rural USF.” Contrary to the picture portrayed by the BellSouth Brief, the Coalition has acted to develop a new rate design and universal service proposal. Grant of the BellSouth Motion was never necessary to encourage the Coalition either to negotiate or to develop a new proposal. Accordingly, the BellSouth Motion should be dismissed as moot.

The Coalition and BellSouth are in agreement, however, with respect to the subsequent course that should be taken in this proceeding. BellSouth “suggests that some process, whether workshops or the invitation of comments, be re-started to move the Authority closer to the development of a Rural USF plan.”<sup>58</sup> The Coalition has long been on the record proposing and endorsing this approach. The Coalition respectfully looks forward to the opportunity to work

together with all parties in interest to ensure that any and all changes in the Existing Terms and Conditions are undertaken in a manner that truly serves the interests of rural consumers and the preservation and advancement of universal service in the rural areas served by the Coalition members.

Respectfully submitted,

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## 2. GENERAL

### 2.1 Scope

These guidelines are for billing access and interconnection services provided by two or more providers or by one provider in two or more states within a single LATA. It is to the mutual benefit of both customers (customers and end users) and providers that bills be accurate and auditable. This document addresses the concept of MPB and revenue sharing as detailed in the December 8, 1988 Report. As stated previously, access and interconnection services include Usage Sensitive and Flat Rates Services. Where intrastate tariffs and contracts permit, these guidelines are used for access and interconnection services. The determination of implementing a meet-point Billing arrangement between providers, which operate in the same territory, is based upon Provider-to-Provider negotiations where the regulatory environment permits. When all involved providers agree to a meet-point Billing arrangement, these guidelines are used.

### 2.2 MECAB Revision

#### 2.2.1 Reason for Revision

OBF Issue 472 (the MECAB Change Management Document) recommends that the MECAB be updated to incorporate all resolved OBF issues affecting the MECAB document. This is the **sixth revision** to the MECAB based on OBF Issue 472. This revision contains updates to industry guidelines to reflect the resolution of the following OBF Issues:<sup>1</sup>

- Issue 1548 - Billing Verification Process in an Unbundled Environment
- Issue 1667 - Exchange of Billing Information
- Issue 1690 - Notification of Interconnecting Billing Information to the ULEC.
- Issue 2056 - For Facility-Based LECs/CLECs & CMRS, Enhance the Meetpoint/Meetpoint-like Record Exchange to be Consistent with Unbundled Processes
- Issue 2138 - Redefine and Evaluate the Need for Existing MECAB Data Elements
- Issue 2162 - Eliminate Pass Through meet-point Billing Options in MECAB

The following issues were reviewed but no changes were made to the document.

- Issue 1284 - Long Term LNP Billing and Verification
- Issue 1287 - Billing For Unbundled Network Elements
- Issue 1528 - The Billing Impact Resulting From Access Reform
- Issue 1593 - Guidelines Do Not Exist For Providing Historical PICC Detail Data to Verify PICC Charges

#### 2.2.2 Change Management

MECAB standards represent policy guidelines approved by the OBF; the Billing Committee of the OBF is responsible for the MECAB document. MECAB is changed through the incorporation of resolved OBF issues. Proposed changes to MECAB are reviewed and approved by the OBF Billing Committee and the OBF General Session. In accordance with the MO&O in CC Docket No. 86-104, released July 31, 1987, the FCC will have the opportunity to review any revisions to the standards (MECAB) to the extent that further tariff revisions are necessary.

<sup>1</sup> A record of resolved OBF Issues incorporated in MECAB revisions is contained in Section 11 - OBF Issues Included in MECAB Revisions.

## CERTIFICATE OF SERVICE

I, William T. Ramsey, the undersigned, hereby certify that a true and correct copy of the foregoing has been served on the parties of record indicated below via U.S. Mail and via electronic mail.

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